



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES
WESTCHESTER REGIONAL OFFICE

June 2, 2021

Hon. Philip M. Halpern
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Re: *Thurmond v. Avion Thomas-Walsh et al.*, 7:18-cv-00409 (PMH-JCM)

Dear Honorable J. Halpern:

In this 42 U.S.C. § 1983 action, this Office represents Defendants Avion Thomas-Walsh and Dr. Frederick Bernstein. The remaining claim in this action is plaintiff's First Amendment claim against Def. Thomas-Walsh alleging a retaliatory change in his medication in response to a grievance and a supervisory claim against Def. Bernstein based on Def. Walsh's alleged retaliatory act.

This letter is filed in response to Plaintiff's letter wherein he incorrectly states discovery is complete and is seeking permission to file a R.56 motion. As discussed with Plaintiff via telephone, and as per the Defendants' letter to Magistrate McCarthy, there are two outstanding items:

1. **Plaintiff's deposition transcript.** Judge McCarthy ordered Plaintiff to sit for his deposition and the same was completed on May 13, 2020. It was explained to him that at the end of the deposition that once the transcript is received, a copy will be sent to him for his review and execution and he must return the executed version to this Office.
2. **Plaintiff's executed HIPAA authorization for him OMH records.** Plaintiff claimed in his pleading and at his deposition that he has a psychological injury related to his fear of medical providers, inability to sleep and related emotional damages. He refused to withdraw the same at this deposition. I clearly explained no less than four (4) times I would send him a HIPAA for his Office of Mental Health (OMH) records for the dates he allegedly suffered these injuries. He has not returned the HIPAA.

Judge McCarthy then issued an order on 05/26/2021 (Dkt. No. 71) for Defendants to submit a joint letter on June 25, 2021 regarding the status of the remaining discovery. Plaintiff has plainly ignored the order and has opted to ignore Judge Judith McCarthy and write to your honor. Defendants ask that the Court direct Plaintiff to complete and return the OMH HIPAA as directed in the correspondence sent on May 26, 2021 and to review and execute his deposition transcript once he receives it. Defendants also ask that the Court deny Plaintiff's request for a R.56 motion as premature as his deposition transcript is not even yet available.

Respectfully submitted,

J. Powers
Janice Powers, Esq.
Assistant Attorney General

cc via regular mail to:

Kevin Thurmond (00-A-5247) Woodbourne Correction Facility 99 Prison Road P.O. Box 1000 Woodbourne, NY 12788

SO ORDERED:

This letter has been referred to me by Judge Halpern to handle the discovery issues. On May 26, 2021, I extended discovery solely relating to Plaintiff's execution of his deposition transcript and execution of a HIPPA authorization for his OMH records. (See Docket No. 71). Therefore, discovery remains open relating to these two items. Plaintiff is directed to sign and return the OMH HIPAA authorization to the Defendants by June 18, 2021. Plaintiff is further directed to review and sign the transcript of his deposition, which he shall return to the Defendants within ten (10) business days of receipt. Plaintiff's motion for leave to move for summary judgment is denied without prejudice as premature. The Clerk is directed to mail a copy of this endorsement to the *pro se* Plaintiff.

Judith C. McCarthy 6-7-2021
JUDITH C. McCARTHY
United States Magistrate Judge